

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**ULER HAGGERTY**

Claimant

VS.

**FARMLAND FOODS**

Respondent

Self-Insured

Docket No. **262,512**

**ORDER**

Respondent requests review of a preliminary Order entered by Administrative Law Judge Bryce D. Benedict on June 7, 2001.

**ISSUES**

The Administrative Law Judge awarded claimant temporary total disability compensation and medical benefits. Respondent and its insurance carrier requested the Board to review the issue of whether claimant's accident arose out of his employment with respondent. The claimant was injured at work on December 19, 2000. After he had turned the corner around a machine and continued walking, he felt his knee pop and buckle. Respondent contends claimant's injury did not arise out of his employment because his injury was not the result of any risk associated with his employment, but instead was due to a personal risk, specifically walking. Respondent further argues that walking is a normal activity of day-to-day living and, therefore, claimant is precluded from receiving workers compensation benefits by the provisions of K.S.A. 1997 Supp. 44-508(e).

Conversely, claimant contends his job required constant bending, squatting, kneeling, lifting and the knee injury was the culmination of work-related repetitive trauma to the knee. Accordingly, the claimant argues the Administrative Law Judge's Order should be affirmed.

**FINDINGS OF FACT**

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

Claimant was employed by respondent on June 8, 2000. Claimant is a lineman on a bologna and salami production line and is responsible for the machine and four other employees.

Claimant testified that he lifts rows of film weighing in excess of 50 pounds, unjams the labeler 5-6 times in an 8-hour shift, changes the bottom table and boxer once a shift, is required to put labels on boxes and move a cage containing 6-foot rows of meat from one place to another. He further noted that his job duties require constant bending at the knees.

While working on December 19, 2000, claimant testified that he was on the front line, looked up and noticed that his boxer was almost out of boxes so he hurried around the front side of the machine to get to the back side. After he made a turn coming around the machine, he felt his knee pop, it buckled and he was not able to put any pressure on that leg. Claimant testified that at the time of the accident he did not slip, he was not bending or lifting, nor turning a corner and was walking in a straight line.

The claimant reported the injury to the respondent and was sent to Stormont-Vail emergency room.<sup>1</sup> The claimant then went to the V.A. where x-rays were taken. The respondent's safety coordinator referred claimant to Midwest Occupational Health where claimant was seen by Dr. Geis. Ultimately, claimant was diagnosed with a torn meniscus tendon and was referred to Dr. Lepse.

Claimant testified that he had not had any previous problems with his left knee except that he had experienced pain in his left knee about a week or week and a half before the accident. He had noticed some pain and stiffness in his knee and was limping. However, claimant noted that he had never noticed pain while bending down picking up any objects at work.

### **CONCLUSIONS OF LAW**

Because the accident occurred while claimant was at work, the accident occurred in the course of claimant's employment. However, the accident must also arise out of the employment before it is compensable under the Kansas Workers Compensation Act. See *Newman v. Bennett*, 212 Kan. 562, 512 P.2d 497 (1973).

The phrase "out of" employment points to the cause or origin of the worker's accident and requires some causal connection between the accident and the employment. An accidental injury arises out of employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is performed and the resulting injury. An injury arises out of employment if it

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<sup>1</sup> Although the preliminary hearing transcript indicates claimant went to Summerville Emergency, the medical exhibits note claimant initially sought treatment at Stormont-Vail emergency room.

arises out of the nature, conditions, obligations, and incidents of the employment. *Kindel v. Ferco Rental, Inc.*, 258 Kan. 272, 899 P.2d 1058 (1995).

In *Hensley v. Carl Graham Glass*, 226 Kan. 256, 597 P.2d 641 (1979), the Kansas Supreme Court adopted a risk analysis. It categorized risks into three categories: (1) those distinctly associated with the job; (2) risks which are personal to the workman; and (3) neutral risks which have no particular employment or personal character. According to Larson's *The Law of Workmen's Compensation*, Sec. 10.31, the majority of jurisdictions compensate workers who are injured in unexplained falls upon the basis that an unexplained fall is a neutral risk and would not have otherwise occurred at work if claimant had not been working.

Although walking can be described as a normal activity of day-to-day living, K.S.A. 44-508(e) does not exclude "accidents" that are the result of such activity, but rather excludes injuries where the "disability" is a result of the natural aging process or the normal activities of day-to-day living.

In this case there was a specific onset of injury caused by an accident at work. There is no allegation in this case that claimant's disability resulted from the wear and tear common to acts of everyday living combined with a preexisting condition, as was the case in *Boeckmann v. Goodyear Tire & Rubber Co.*, 210 Kan. 733, 504 P.2d 625 (1972). Neither is this a case where claimant had a preexisting condition which was worsened or made symptomatic by a solely personal risk as in *Martin v. U.S.D. No. 233*, 5 Kan. App.2d 298, 615 P.2d 168 (1980). Accordingly, the Board finds the injury which occurred from the act of hurriedly walking around the machine does constitute an injury that arose out of the employment.

### **AWARD**

**WHEREFORE**, it is the finding, decision and order of the Board that the Order of Administrative Law Judge Bryce D. Benedict dated June 7, 2001, is affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of August 2001.

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BOARD MEMBER

c: James Wisler, Attorney, Topeka, Kansas  
D'Ambra Howard, Attorney, Shawnee Mission, Kansas  
Bryce D. Benedict, Administrative Law Judge  
Philip S. Harness, Workers Compensation Director